



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201241014

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 17 2012

U.I.L. 408.03-00

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Legend:

Taxpayer A = xxxxxxxxxxxxxxxxxxxx
IRA X = xxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxx
Amount D = xxxxxxxxxxxxxxxxxxxx
Company C = xxxxxxxxxxxxxxxxxxxx
Date 1 = xxxxxxxxxxxxxxxxxxxx
Date 2 = xxxxxxxxxxxxxxxxxxxx
Date 3 = xxxxxxxxxxxxxxxxxxxx

Dear xxxxxxxxx:

This is in response to your letter dated xxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxx, submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A, age 83, represents that on Date 2 he received a distribution from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to his mental state following the death of his brother and his subsequent responsibility for the medical care of his sister-law.

Taxpayer A is a retired academic physician. Taxpayer A was the executor of his brother's estate. Following the death of his brother, Taxpayer A was responsible for his late brother's wife's care and nursing home expenses as his brother had left no provisions for his burial or his wife's nursing care expenses.

Taxpayer A withdrew Amount D from IRA X to cover the burial expenses for his late brother and to pay for his sister-in-law's nursing home expenses. However, during the 60-day period, Taxpayer A realized that he did not need the funds for expenses and he intended to replenish the funds to IRA X. Taxpayer A had the financial ability and resources to replenish IRA X during this period, but was unable to do so because he was so overwhelmed with issues relating to the death of his brother and the acute illness of his sister-in-law.

During and following the 60-day period, Taxpayer A's full attention was to the funeral arrangements of his brother and the medical care of his sister-in-law. He travelled from his home in xxxxxxxxx to xxxxxxx several times a week to deal with his sister-in-law's nursing home care. Taxpayer A's sister-in-law subsequently died on Date 3.

Based on the facts and representations, Taxpayer A requests that the Internal Revenue Service (the Service) waive the 60 day rollover requirement with respect to the distribution of Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without

regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by his mental state following the death of his brother and his involvement in the subsequent medical care of his sister-in-law.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file with this office.

If you have any questions regarding this letter, please contact xxxxxxxxxxxxxxxx, SE:T:EP:RA:T:3 at xxxxxxxxxxxxxxxx.

Sincerely yours,



A. B. Warshawsky

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

Cc: xxxxxxxxxxxxxxxx